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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/528,822	03/20/2000	Rumiko Kikuta	FUJY 17.159	6311

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Katten, Muchin, Zavis & Rosenman  
575 Madison Ave.  
New York, NY 10022-2585

EXAMINER

LEE, TIMOTHY L

ART UNIT	PAPER NUMBER
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2662

DATE MAILED: 11/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/528,822

Applicant(s)

KIKUTA, RUMIKO

Examiner

Timothy Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engel et al. (US 6,519,636) in view of De Prycker et al. (US 5,027,351).
2. Regarding claims 1 and 8, Engel et al. discloses a computer connected to one or more networks through appropriate network interfaces—this computer is used to classify, manipulate, and/or control communications. As shown in Fig. 2, client 160D can include a smart cellular/desktop phone, and the network 130 could be any packet switched network such as the public Internet (an Internet telephone system having an Internet network for transferring voice in the form of a voice packet). See col. 6, lines 15-43. Other “Internet Media” can include images, animation, music, text, pictures, and data, and there are known processes defined by standards like IP, UDP, TCP, and RTP protocols that can augment the packets with the necessary information so that they travel over the packet-switching network to their destination. (transferring data in the form of data packets which are transmitted from a data communications terminal). See col. 1, lines 35-50. The network includes access points 140 and routers 110 (a first routing unit for routing). The network also includes a network server 170 that includes such mechanisms as controlling the size of the packets sent to the network and controlling the size at which data is passed to the application (a maximum length of each of the data packets transferred

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via said Internet network; restricting the maximum length of the data to the predetermined limit value). See col. 7, lines 1-13. As an example, control parameters as shown in Fig. 7 apply a rule that guarantees that the maximum packet size does not exceed 512. See col. 9, line 34-43. These parameters can change based on the implementation of a new set of rules. The rules set exists inside of the network server 170, and the rule types can apply on the sending side, controlling packet sent to the network, and on the receiving side, controlling how packets/data is delivered to the application. See col. 7, line 5-26. Rules can change based on trigger events (changing a maximum length of each of the data packets transferred via said Internet network). Trigger events can include an event that causes an attempt to send data to the network. See col. 10, line 65-col. 8, line 8. The bandwidth can change during the transmission and the rule can be updated by triggering a modify rule event. See col. 11, lines 24-26. As an example, Engel et al. discloses that if the server realizes that the bandwidth constraints have disappeared (e.g. the client has terminated a voice over IP call with a peer) the rules pertaining to the client can be deleted using a trigger event. Of course, if the system can use a trigger even in the event a call ending, it had to have been able to trigger an event in the first place when the call was initiated (a first detecting unit for detecting a transition of a call-out state of the voice terminal). See col. 18, lines 59-64. Engel et al. does not expressly disclose having a packet-assembling unit assemble a control packet to be sent to the router to inform it to restrict packets that are over a certain length. De Prycker et al. discloses sending a control packet that has been assembled by a packet processing circuit. Based on a received value, the first packet processing circuit creates a control packet and passes this packet to the a different packet processing circuit, which transfers the control information contained in the packet onto the computer. See col. 3, lines 60-68. It would have

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been obvious to a person of ordinary skill in the art at the time of the invention to have used the teachings of De Prycker et al. and have the network server of Engel et al. send an information packet to the first router to notify it not to pass through any packets over a certain length, instead of having the server do all of these functions itself. One of ordinary skill in the art would have been motivated to do this because the size of the packet is just being limited at a different point in the network as disclosed in Engel et al.. Using the rules and the trigger events, the server could very easily send out a control packet to the first router to inform it to not to pass through packets over a certain length, instead of just having the packets restricted when they are initially sent. The same concept of maintaining flow for real-time traffic is disclosed in Engel et al., only it is implemented at a slightly different point of the network.

3. Regarding claim 2, Engel et al. discloses the existence of many routing devices 110 through the network 130. One of these routers could certainly act as a second routing device that routes voice packets while only data packets travel to the first router, depending on destination address. See Fig. 2.

4. Regarding claims 4, 5, 10, and 11, some detecting mechanism exists in order to see when a user has ended a voice over IP call as mentioned previously. See col. 18, lines 59-64. Also, Engel et al. discloses this is done so that bandwidth constraints can be removed, and one of the ways of increasing bandwidth back to original levels would be to increase the maximum packet length back to pre-call levels.

5. Regarding claim 6, if voice over IP is used, then an IP protocol is in place, so an Internet Protocol packet must be used.

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6. Regarding claim 7, Engel et al. discloses that the source computer can transform the continuous voice analog signals into a series of discrete digitally compressed packets (packet assembling unit are provided in a gateway for converting the voice information transmitted from said voice communications terminal into a packet in accordance to IP). Engel et al. does not expressly disclose having both a first and second routing unit in one router for routing IP packets, but it would have been obvious to include two routing units in one router. One of ordinary skill in the art would have been motivated to do this because having a second routing unit would provide redundancy in the situation that a first routing unit fails.

7. Regarding claim 9, Engel et al. discloses that it is possible to give priority to certain data flows if you use a wildcard character in the unknown value. Using this for the voice packets, they can be given preferential routing treatment (preferentially routing the voice packet). See col. 20, lines 14-29.

8. Regarding claims 12 and 13, Engel et al. discloses that a shaping mechanism determines the maximum size of information that can be passed through the system. This size is based on many factors. See col. 16, line 64-col. 17, line 6. It is evident that this size can also be less than the maximum length possible for a particular packet because it says that the system must be careful in choosing this value for some of the packets will never be sent if the value is chosen to be too small (the predetermined value is smaller than the maximum length of the data packet). See col. 17, lines 7-17.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Engel et al. in view of Kikinis (US 6,289,389). Engel et al. does not expressly disclose fragmenting data when the length exceeds a certain value. Kikinis discloses dividing non-real time packets if they are

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too large as to not disrupt the video stream during transmission. See col. 7, lines 47-65. It would have been obvious to a person of ordinary skill in the art at the time of the invention to fragment packets if they exceed the maximum limit. One of ordinary skill in the art would have been motivated to do this because this way, the real-time data can be sent without large non-real time packets holding up the resources and flow of packets.

### ***Response to Arguments***

10. Applicant's arguments filed August 21, 2003 have been fully considered but they are not persuasive.

11. In response to Applicant's argument that the phrase "restricting the maximum length of the data packet to the predetermined limit value" in claims 1 and 8 relates necessarily to the passage of the specification mentioned in the 6<sup>th</sup> paragraph on page 6 of the response, the Examiner respectfully disagrees. There is no mention in the claims of a "data fragmentation" circuit that judges whether the packet length exceeds a certain value and that the fragmentation circuit will fragment the packet if it is beyond a certain length. As currently drafted, "restricted" can be read to mean that the system prevents a packet of a certain length from passing through. In the passage cited by Applicant, there is no mention that "restricted" must necessarily pertain to all of the fragmentation steps described. In fact, the word "restricted" is not even used in that section to describe the fragmentation steps. Therefore, the Examiner believes that the rejection is still valid.

12. In response to applicant's argument that Kikinis fails to teach restricting the length of a data packet specifically and does not suggest routing via the Internet specifically, the test for

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obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Lee whose telephone number is (703)305-7349. The examiner can normally be reached on M-F, 9-5.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on (703)305-4744. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-4700.

TLL

  
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